

**REMARKS**

In response to the communication of November 24, 2004, Applicants re-presented claims as in the Amendment of October 14, 2004, but cancel claims 27-44. It is believed that the Examiner meant to group claim 44 with claims 27-43.

However, the Examiner is requested to withdraw the one month statutory period for response.

This is a RCE. The argument can be made that claims 27-44 are originally presented claims. See MPEP 801.2(a). In other words, claims could have been properly added and entered into the application before an action is given and they should be treated as original claims for purposes of restriction only.

However, assuming that Applicants are incorrect in this assertion, then MPEP 801.2(a) provides that subsequently presented claims to an invention other than that acted upon should be treated as provided in MPEP 821.03.

MPEP 821.03 provides that claims added by amendment following action by the Examiner to an invention other than that previously claimed should be treated as in 37 C.F.R. § 1.145.

37 C.F.R. § 1.45 provides, *inter alia*, that Applicant will be able to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review. MPEP 821.03 further provides, "Of course, a complete action on all claims to be elected to the invention should be given".

Applicant respectfully submits that what the Examiner should have done in this situation is simply to have acted on the merits with respect to the claims under consideration and should have simply treated claims 27-44 as withdrawn from consideration. See form paragraph 8.04. This would have relieved Applicants of the burden for paying extensions of time to respond to the paper of November 24, 2004.

Applicants submit that that is the equitable way to proceed, but, if the Examiner disagrees, the Examiner is authorized to charge our deposit account No. 19-4880.

A divisional application is being filed directed to claims 27-44.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

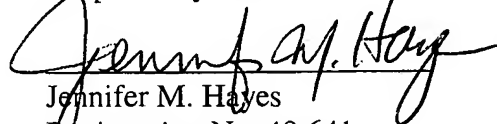
WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

Date: February 23, 2004

Respectfully submitted,



Jennifer M. Hayes  
Registration No. 40,641